



CITY OF

FAIRBANKS

RECEIVED

JUN 19 2001

June 19, 2001

Local Boundary Commission

VIA FAX TO (907) 269-4539/
ORIGINAL U.S. PRIORITY MAIL

Dan Bockhorst, LBC Staff Supervisor
Local Boundary Commission
Department of Community & Economic Development
350 West 7th Avenue, Suite 1770
Anchorage, Alaska 99501-3510

Re: City of Fairbanks' Request for Reconsideration

Dear Mr. Bockhorst:

The Local Boundary Commission's ("LBC") Statement of Decision In the Matter of the Petition for Consolidation of the City of Fairbanks and the Fairbanks North Star Borough, dated June 7, 2001, is final pursuant to 3 AAC 110.570(g). The City of Fairbanks requests reconsideration, as allowed by 3 AAC 110.580(a), of two findings of the LBC. Those findings are:

(1) that the constitutional and statutory preference for avoiding the creation of a service area where there is an existing city can be abrogated by the Petition for Consolidation in this matter (see, LBC Statement of Decision, dated June 7, 2001, at pages 19-20); and,

(2) that consolidation is subject to only one, areawide vote of the residents of the Fairbanks North Star Borough (see, LBC Statement of Decision, dated June 7, 2001, at page 1) and that the residents of the City of Fairbanks are not entitled to a separate vote on the dissolution of their home rule city and their inclusion in the so-called "City Service Area".

The facts and analyses that support this request for reconsideration are set forth below.

the GOLDEN HEART CITY ... "extremely Alaska"

800 Cushman Street • Fairbanks, Alaska 99701-4615

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There is a Constitutional and Statutory Preference for
an Existing City Over the Creation of a Service Area

The abolition of a home rule city and its reincarnation as a service area in a second class borough as part of a consolidation process has never occurred in Alaska. In fact, this "drastic step" was specifically considered and rejected by the Local Government Committee at the Alaska Constitutional Convention in 1956:

We [the Committee on Local Government]...considered very seriously what the function of cities would be within the borough. We...even at one point [considered] the abolition of existing cities and reconstituting them as urban service areas under the borough. However, it was the opinion of the Committee [on Local Government] that while that had very definite advantages of completely unified government, that it was too drastic a step to take at one point and to abolish those units altogether. In view of the large investment that they have set out, and in view of the experience of government over the more than 50 years that cities have been in existence in Alaska, since they were the first form of government that we had in Alaska before we even became organized as a Territory; at the same time we visualize the possibility that as the borough becomes a more definite unit of government over the years, which we hope it will, the scope better defined, that all the functions that can best be carried out on the unified basis be transferred over to the borough. [Emphasis added]

Remarks of Delegate Victor Fischer, member of the Committee on Local Government, at the Alaska Constitutional Convention, Fifty-Eighth Day, January 19, 1956, Proceedings, Part 4, at page 2654.

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A review of the proceedings of the Alaska Constitutional Convention¹ on the Local Government Article to the Constitution of Alaska (Article X, Sections 1 to 15) shows clearly that the abolition of cities -- in favor of service areas or boroughs -- was explicitly considered and rejected by the delegates to the Constitutional Convention. Hence, the LBC's finding that a municipal consolidation which abolishes a home rule city and in its place recreates a service area is constitutionally sound is flawed and should be reconsidered.²

The Alaska Statutes also express a preference for avoiding the creation of service areas where there is an existing city. See, A.S. 29.35.450(b). The Alaska Supreme Court has interpreted this statute (and Article X, Section 5, "Service Areas," of the Alaska Constitution) as preferring incorporation of a city over the creation of new service areas. Keane v. Local Boundary Commission, 893 P.2d 1239, 1243 (Alaska 1995). Therefore, these standards (statute, case law and Constitutional provisions)

¹ The proceedings of the Alaska Constitutional Convention are contained in six volumes, denominated as Parts 1 to 6. The Local Government Article was presented as Committee Proposal No. 6 and No. 6a with accompanying Committee Reports No. 6 and No. 6a. See, Alaska Constitutional Convention, Part 6, Appendix V, "Committee Proposals and Commentary", pages 39 to 59. The Local Government Article was discussed by the delegates on December 19, 1955 (Part 2, pages 1113-1114), January 4, 1956 (Part 2, page 1161), January 18, 1956 (Part 4, page 2587), January 19 and 20, 1956 (Part 4, pages 2610 to 2788), January 24, 1956 (Part 4, page 2999), January 30, 1956 (Part 5, pages 3593 to 3628) and February 3, 1956 (Part 5, page 3893).

² Chairman Rosswog, of the Committee on Local Government, noted at the introduction of the Local Government Article, that the Committee had three basic rules in mind, one of which was that the local units of government "should have as much local home rule as possible." Alaska Constitutional Convention, Part 2, December 19, 1955, at page 1113. This was also emphasized in the December 19, 1955 report, "The highest form of self-government is exercised under home rule charters..." Alaska Constitutional Convention, Part 6, Appendix V, page 47. See, also, January 18, 1956, commentary, Part 5, Appendix V, page 58, "[T]he Committee on Local Government is proposing this article [Article X, Local Government] with the purpose of enabling the people in any part of Alaska to achieve a maximum amount of home rule for themselves." Service areas were viewed as a stepping stone to home rule. "Through establishment of service areas and assumption of administrative or advisory responsibility, the citizens of small communities or rural areas will be preparing themselves for full self-government [home rule]." Id at page 50. The reverse "movement" proposed by the LBC -- from home rule to service area -- would be an anathema to the delegates to the Alaska Constitutional Convention.

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mandate reconsideration of the LBC's finding "K. Standards Concerning Constitutional Preference - City vs. Service Area" at pages 19-20 of the June 7, 2001 Statement of Decision.

Pursuant to A.S. 29.35.490(a)(1) a Majority of the Voters in the City of Fairbanks Must Approve Their Inclusion in the Proposed City Service Area

On January 31, 2001 and May 23, 2001, the City brought the requirements of A.S. 29.35.490(a)(1) to the attention of the LBC. See, Exhibit "A" and Exhibit "B" attached hereto. However, to date, neither the LBC nor the Attorney General's Office has ever addressed this statute and its clear, unambiguous mandate.³

The mandate of A.S. 29.35.490(a)(1) is simple and straight forward:

A second class borough [the proposed Municipality of Fairbanks] may exercise in a service area [the proposed City Service Area] any power granted a first class city by law or a nonarea-wide power that may be exercised by a first class borough if...the exercise of the power is approved by a majority of the voters [of the City of Fairbanks] residing in the [newly created City] service area...

In other words, a second class borough cannot force residents into a service area unless those residents consent to the formation of the service area. In this case, therefore, the residents of the City of Fairbanks must be allowed to vote separately on their inclusion in the so-called City Service Area before the consolidation process can proceed to an area-wide vote.

³ The Attorney General's Memorandum of March 15, 2001 (which is Appendix D to the LBC's March 2001 Final Report) never mentions, cites or references A.S. 29.35.490(a)(1). The so-called "additional analysis" by the Attorney General of June 5, 2001 likewise does not even mention or address A.S. 29.325.490(a)(1). Instead, this later memorandum discusses A.S. 29.35.450 -- a statute never cited by the City -- and some general propositions from McQuillin's treatise on municipal law that are inapposite to the clear, unambiguous requirements of A.S. 29.35.490(a)(1).

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The Alaska Constitution in Article X, Section 5, "Service Areas," mandates that "[s]ervice areas...may be established...subject to the provisions of law..." Article X, Section 7, "Cities", of the Constitution further requires that "[Cities] may be...dissolved in the manner provided by law."⁴ The dissolution of the City of Fairbanks and its reincarnation as a City Service Area by law requires that the residents of the City of Fairbanks vote separately on their destiny as a City Service Area. That is what A.S. 29.35.490(a)(1) requires -- no more, no less.

It should also be noted that the Legislature recently amended A.S. 29.35.450. See, CCS SSMB 13, which was codified as Chapter 31, Session Laws of Alaska 2001, signed by the Governor on May 24, 2001 and effective on August 22, 2001. The amendments to A.S. 29.35.450 were made to support local control of service areas. See, copy of CCS SSMB 13 and report by sponsor Representative Con Bunde attached hereto as Exhibit "C". Hence, the ignoring of the requirements of A.S. 29.35.490(a)(1) -- control of service area inclusion by the residents of the proposed service area -- is contrary to the law mandated by the legislature, contrary to the concept of service areas manifested by the most recent amendments to A.S. 29.35.450 and contrary to the dictates of the Alaska Constitution.

For these reasons, the City of Fairbanks requests that the LBC reconsider its decision that the residents of the City of Fairbanks can be denied the franchise granted to them by A.S. 29.35.490(a)(1). This disenfranchisement is clearly contrary to law and in violation of the mandates of the Alaska Constitution. The consolidation proposal is fatally flawed if the voters of the City of Fairbanks are denied their rights to vote on the service area issue.

Conclusion

The Alaska Constitution and Alaska Statutes clearly prefer, in fact require, avoiding the creation of service areas where there are existing cities. A finding by the LBC to the contrary is

⁴ The terms "by law" and "by the legislature" are used interchangeably throughout the Alaska Constitution when related to law-making powers. City of Douglas v. City and Borough of Juneau, 484 P.2d 1040, 1042 (Alaska 1971) and Alaska Constitution, Article XII, Section 11.

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inapposite and should be reconsidered. Likewise, disenfranchising the voters of the City of Fairbanks -- by denying them their right to vote under A.S. 29.35.490(a)(1) -- is contrary to law and will invalidate the entire consolidation process. Therefore, the LBC should reconsider its decision and restore the franchise to the residents of the City of Fairbanks.

Sincerely,

CITY OF FAIRBANKS



Patrick B. Cole
Administrative Services Director

PBC/lmd

- Enclosures: (1) Exhibit "A", redacted portion of City's January 31, 2001 letter to LBC [two pages];
(2) Exhibit "B", City's letter of May 23, 2001 (with attachments) to LBC [eight pages]; and,
(3) Exhibit "C", CCS SSMB 13 and Representative Bunde's report [four pages]
- cc: Mayor Hayes and City Council Members (with enclosures)
Ardith Lynch, Borough Attorney, Fairbanks North Star Borough (with enclosures)
Cynthia M. Klepaeki, Assistant Borough Attorney, Fairbanks North Star Borough (with enclosures)
Interior Taxpayers' Association (with enclosures)
Don Lowell, Consolidation Committee (with enclosures)
Bonnie Williams, Assembly Member, Fairbanks North Star Borough (with enclosures)
Garry Hutchinson, Assembly Member, Fairbanks North Star Borough (with enclosures)

Mr. Dan Bockhorst, Local Government Specialist
Department of Community and Economic Development
Local Boundary Commission
January 31, 2001
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The Residents of the City Must Vote Separately on Their Future.

AS 29.06.140 requires an "election in the area to be included in the new municipality to determine whether the voters desire merger or consolidation . . . A voter who is a resident of the area to be included in the proposed municipality may vote." Since the corporate limits of the City is an area proposed to be included in the new Municipality of Fairbanks, the voters of the City should be given the opportunity to control their own destiny. See also, January 16, 2001 email from Fairbanks North Star Borough Assembly Member Gary Hutchison to Dan Bockhorst, DCED/LBC Staff.

AS 29.35.490 requires a majority of voters in a service area to approve the exercise of power by a second class borough:

Service areas in second and third class borough. (a) A second class borough may exercise in a service area any power granted a first class city by law or a nonexclusive power that may be exercised by a first class borough if

- (1) the exercise of the power is approved by a majority of the voters residing in the service area; or
- (2) all owners of real property in the service area consent in writing to the exercise of the power if no voters reside in the service area.

AS 29.06.140 must be understood in conjunction with AS 29.35.490. A new second-class borough can only provide police, fire, and other "city" services in the former City of Fairbanks if a service area is formed. A service area can only be formed by an election if voters reside therein. Therefore, if the LBC approves the consolidation petition -- in spite of the serious flaws that have been noted -- the voters of the City of Fairbanks must vote first and separately on the consolidation petition before it can even proceed to an area-wide vote. (If it fails in the City of Fairbanks, the petition process could proceed no further.)

Sec. 29.06.140. Election. (a) The Local Boundary Commission shall immediately notify the director of elections of its acceptance of a merger or consolidation petition. Within 30 days after notification, the director of elections shall order an election in the area to be included in the new municipality to determine whether the voters desire merger or consolidation. The election shall be held not less than 30 or more than 90 days after the election order. A voter who is a resident of the area to be included in the proposed municipality may vote.

(b) A home rule charter in a merger or consolidation petition submitted under AS 29.06.100(h)(5) is part of the merger or consolidation question. The charter is adopted if the voters approve the merger or consolidation. The director of elections shall supervise the election in the general manner prescribed by AS 15 (Election Code). The state shall pay all election costs.

(c) The director of elections shall certify the election results. If merger or consolidation is approved, the director of elections shall, within 10 days, set a date for election of officials of the new municipality. The election date shall be not less than 60 or more than 90 days after the election order and it is the effective date for the merger or consolidation. (§ 5 ch 74 SLA 1985; am § 18 ch 68 SLA 1994)

Sec. 29.35.490. Service areas in second and third class boroughs. (a) A second class borough may exercise in a service area any power granted a first class city by law or a nonexclusive power that may be exercised by a first class borough if

(1) the exercise of the power is approved by a majority of the voters residing in the service area; or

(2) all owners of real property in the service area consent in writing to the exercise of the power if no voters reside in the service area.

(b) If the exercise of the power is approved by a majority of the voters residing in the service area, a third class borough may exercise in a service area any power not otherwise prohibited by law.

(c) A second or third class borough may establish a service area that includes only vacant, unappropriated, and unreserved land owned by the borough. A second or third class borough may establish a service area, with the concurrence of the commissioner of natural resources, that includes only vacant, unappropriated, and unreserved land owned by the state and classified for disposal to individuals. By ordinance a second or third class borough may provide the services in a service area established under this subsection necessary to develop state or municipal land as required by the planning, platting, and land use regulations of the borough. (§ 10 ch 74 SLA 1985)



CITY OF

FAIRBANKS

COPY

May 28, 2001

Karin Waring, Chair
Local Boundary Commission
550 West 7th Ave., Suite 1770
Anchorage, AK 99501-3810

Dear Mr. Waring and Commissioners:

Since the date of the Commission recess on April 7, 2001, both the City Council and the Borough Assembly have declined to exercise the options provided by the agreement reached that day by the Petitioners' Representative, the Borough and the City.

The City appreciates the ample opportunity we were given to address the Petition deficiencies. With one major exception, the Petitioners' Representative and LBC staff responded. The City's January 31, 2001 letter to Dan Bodhorst, at page 11, noted, "the voters of the City of Fairbanks must vote first and separately on the consolidation petition before it can even proceed to an area-wide vote." Exhibit "A," attached, is a copy of the pertinent portion of page 11 of the January 31, 2001 letter and the two Alaska Statutes cited in our letter. A.S. 29.06.140 and A.S. 29.35.480. As applied to this Petition, those statutes require that the residents of the overall borough as a single pool must approve the petition and the residents of the City must also approve the proposed Urban Service Area. To date, neither DCED nor the Attorney General has directly addressed this issue.¹ Unless the Petition is approved at both elections, it will not become effective as a matter of law. If the residents of the proposed Service Area do not approve, there will be no Urban Service Area, an integral element of the Petition.

The failure to schedule two elections would be a fatal flaw, and grounds for legal challenge by anyone affected by this petition. We request that, if the LBC does decide to advance the Petition to the voters, it be done in accord with the law by scheduling two elections.

Sincerely,

CITY OF FAIRBANKS


Patrick B. Cole
Administrative Services Director

¹ This issue was not raised in the March 15, 2001 Attorney General's Memorandum, Appendix "D" to the Final Report. (Exhibit "F" to this letter).

the GOLDEN HEART CITY -- "extremely Alaska"
890 Cushman Street Fairbanks, Alaska 99701

Exhibit "B"

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Mr. Dan Backhorst, Local Government Specialist
Department of Community and Economic Development
Local Boundary Committee
January 25, 2001
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The Residents of the City Must Vote Separately on Their Future.

AS 29.05.140 requires an "election in the area to be included in the new municipality to determine whether the voters desire merger or consolidation . . . A voter who is a resident of the area to be included in the proposed municipality may vote." Since the corporate limits of the City is an area proposed to be included in the new Municipality of Fairbanks, the voters of the City should be given the opportunity to control their own destiny. See also, January 18, 2001 email from Fairbanks North Star Borough Assembly Member Gary Hutchison to Dan Backhorst, DCEMLBC Staff.

AS 29.35.480 requires a majority of voters in a service area to approve the exercise of power by a second class borough.

Service areas in second and third class boroughs. (a) A second class borough may exercise in a service area any power granted a first class city by law or a nonexclusive power that may be exercised by a first class borough if

- (1) the exercise of the power is approved by a majority of the voters residing in the service area; or
- (2) all owners of real property in the service area consent in writing to the exercise of the power if no voters reside in the service area.

AS 29.05.140 must be understood in conjunction with AS 29.35.480. A new second-class borough can only provide police, fire, and other "city" services in the former City of Fairbanks if a service area is formed. A service area can only be formed by an election if voters reside therein. Therefore, if the LBC approves the consolidation petition -- in spite of the serious flaws that have been noted -- the voters of the City of Fairbanks must vote first and separately on the consolidation petition before it can even proceed to an area-wide vote. (If it fails in the City of Fairbanks, the petition process could proceed no further.)

Exhibit "A"
(page 1 of 2)

Exhibit "B"

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(5) Sec. 29.06.140. Election. (a) The Local Boundary Commission shall immediately notify the director of elections of its acceptance of a merger or consolidation petition. Within 30 days after notification, the director of elections shall order an election in the area to be included in the new municipality to determine whether the voters desire merger or consolidation. The election shall be held not less than 30 or more than 90 days after the election order. A voter who is a resident of the area to be included in the proposed municipality may vote.

(b) A home rule charter in a merger or consolidation petition submitted pursuant to AS 29.06.150(b)(5) is part of the merger or consolidation question. The charter is adopted if the voters approve the merger or consolidation. The director of elections shall supervise the election in the general manner prescribed by AS 15 (Election Code). The state shall pay all election costs.

(c) The director of elections shall certify the election results. If merger or consolidation is approved, the director of elections shall, within 10 days, set a date for election of officials of the new municipality. The election date shall be not less than 60 or more than 90 days after the election order and it is the effective date for the merger or consolidation. (S 5 ch 74 SLA 1998; am § 15 ch 58 SLA 1994)

Sec. 29.06.150. Service areas in second and third class boroughs. (a) A second class borough may exercise in a service area any power granted a first class city by law or a nonexclusive power that may be exercised by a first class borough if

(1) the exercise of the power is approved by a majority of the voters residing in the service area; or

(2) all owners of real property in the service area consent in writing to the exercise of the power if no voters reside in the service area.

(b) If the exercise of the power is approved by a majority of the voters residing in the service area, a third class borough may exercise in a service area any power not otherwise prohibited by law.

(c) A second or third class borough may establish a service area that includes only vacant, unappropriated, and unreserved land owned by the borough. A second or third class borough may establish a service area, with the concurrence of the commissioner of natural resources, that includes only vacant, unappropriated, and unreserved land owned by the state and classified for disposal to individuals. By ordinance a second or third class borough may provide the services in a service area established under this subsection necessary to develop state or municipal land as required by the planning, platting, and land use regulations of the borough. (S 19 ch 74 SLA 1985)

Exhibit "A"
(Page 2 of 2)

Exhibit "B"

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Final Report

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MAR 26 2001

City Mayor's Office

On the Proposal to Consolidate the City of Fairbanks and the Fairbanks North Star Borough

March 2001



Deborah B. Seelwick
Commissioner

Tony Knowles
Governor



Exhibit "B"

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Appendix D

MEMORANDUM

State of Alaska
Department of Law

To: Dan Bockhorst
LBC Staff Supervisor
Local Boundary Commission
Department of Community &
Economic Development
JW Marjorie L. Vander
Assistant Attorney General
Governmental Affairs - Juneau

Date: March 15, 2001

File No.: 663-01-0082

Tel. No.: 465-3600

Re: Proposition to be placed
before voters regarding
Fairbanks consolidation
petition; AS 29.06.090 -
29.06.170

On behalf of the Local Boundary Commission, you have asked our opinion regarding which consolidation propositions must be placed before voters in the event the Local Boundary Commission (LBC) approves the pending petition for consolidation of the City of Fairbanks and the Fairbanks North Star Borough (FNSB).¹ The petition for consolidation at issue proposes to consolidate the existing home rule City of Fairbanks with the second class FNSB, to create a newly incorporated second class borough.² *Id.* The petition provides for the City of Fairbanks to become an urban service area of the new borough. The city's home rule status and charter will dissolve.³

Under AS 29.06.150(b), assuming the petition for consolidation is approved by the LBC under AS 29.06.130 and the voters under AS 29.06.140, the newly incorporated municipality will succeed to the rights, powers, duties, assets, and liabilities of the consolidated municipalities. Further, under AS 29.05.160, after consolidation, the ordinances, resolutions, regulations, procedures, and orders of the former municipalities

¹ AS 29.71.400(6) reads: "consolidation" means dissolution of two or more municipalities and their incorporation as a new municipality.

² See *Preliminary Report on the Proposal to Consolidate the City of Fairbanks and the Fairbanks North Star Borough* (Dec. 2000), pp. 1 - 2.

³ AS 29.06.170 provides that the provisions for merger and consolidation of municipalities apply to home rule and general law municipalities. Therefore, the charter of the city no longer would be viable if the City of Fairbanks is consolidated with FNSB to form the new second-class borough, Municipality of Fairbanks.

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remain in force in their respective territories until superseded by the action of the new municipality.

The answers to your questions are governed by the provisions of AS 29.06.090-29.06.170. We will address each of your questions below.

Question No. 1: Must voters in the existing home rule City of Fairbanks (which is proposed to be reconstituted as the Urban Service Area of a new general law second class borough) also vote on propositions to authorize the new consolidated general law borough to

- levy in the Urban Service Area a 5% sales tax on liquor;
- levy in the Urban Service Area an 8% sales tax on tobacco; and
- exercise in the Urban Service Area the powers of fire protection, law enforcement, environmental services, building department, engineering department, and public works department?

Answer: With respect to the levy of the 5% sales tax on liquor and the 8% sales tax on tobacco, the answer is no. Under AS 29.06.160, current ordinances of each municipality involved in the consolidation that are in effect at the time of consolidation are to remain in force "in their respective territories" until superseded by the action of the new municipality. There is no distinction as to which municipality's ordinances stay in force during transition; both clearly do.

With respect to the city's tax ordinances, you ask is it relevant that the city enacted those tax ordinances by vote of the council rather than by vote of the citizens.⁴ AS 29.06.160 makes no exception or distinction as to which ordinances remain in force during transition and none should be inferred. The statute is clear on its face. *See U.S. v. Hawesek*, (C.A. 9 Alaska) 176 F.3d 1116, cert. denied 120 S.Ct. 860 (statutory interpretation begins with the plain language of the statute; if the language of the statute is clear, courts need look no further than that language for determining the statute's meaning); *Gerber v. Jorreau Bartlett Mem. Hosp.*, 2 P.3d 74 (Alaska 1999) (where a statute's meaning appears clear and unambiguous, the party asserting a different meaning bears a corresponding heavy burden of demonstrating contrary legislative intent).

⁴ You point out that under AS 29.45.670 if sales tax ordinances are proposed in the future by the new municipality (assuming consolidation occurs), voter approval must be obtained to become effective.

Exhibit "B"

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Re: Fairbanks consolidation petition

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Therefore, according to AS 29.06.160, all ordinances of the City of Fairbanks, regardless of how those ordinances were initially passed (i.e., by council or vote of the citizens), remain in force in the area that is the City of Fairbanks through the transition period. See Vol. 6 *McQuillin Mun. Corp.* §21.27(3rd Ed) (where a consolidation of two or more municipal corporations is effected, each having its peculiar ordinance provisions, it is sometimes provided in the act of consolidation that the ordinances then in force shall remain in force within the limits of the territory for which they were enacted, until repealed by the consolidated entity). That is the process under Alaska law. AS 29.06.160.

With respect to your question as to whether voters in the existing home rule city (to become the Urban Service Area) must vote on propositions on the continued exercise of powers noted above, the answer is no. All of those powers listed were exercised by the City of Fairbanks prior to consolidation and, assuming consolidation is accomplished, the newly incorporated municipality will succeed to all of these listed powers by operation of law. See AS 29.06.150(b). No additional proposition duplicating these powers is necessary to be placed before the voters in order for the new municipality to have authority to exercise these powers.

Question No. 2: Must areawide voters authorize the borough to exercise the new areawide power of cemeteries?

Answer: The need for an answer to this question may be moot since we understand that you expect to be forthcoming a proposal to amend the petition for consolidation to provide for the areawide power of cemeteries to be exercised by the new municipality, the Municipality of Fairbanks.⁵ If the consolidation petition is so amended, then any issue as to whether this power is subject to a vote under AS 29.35.300 (b) and AS 29.35.330(a) as acquiring an "additional" areawide power by a second-class borough, becomes moot because the question will have already been placed before the voters (areawide) at the consolidation election.

Question No. 3: Must areawide voters authorize the borough to levy an areawide 8% bed tax?

Answer: No. This question need not be presented separately to the voters at the consolidation election in order for the current tax to continue in force. Similar to our answer to question No. 1 above, the areawide bed tax ordinance currently levied by the FNSB will remain in force in its current form until superseded by the new

⁵ We understand the City of Fairbanks currently exercises cemetery powers. Such power would transfer to the new municipality by virtue of AS 29.06.150(b).

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municipality. AS 29.06.160. We understand that under the current FNSB ordinance, the FNSB grants an exemption for hotel operators who pay a similar tax to the City of Fairbanks (which has its own 8% bed tax ordinance). With both taxes remaining in effect through transition by operation of law under AS 29.06.160, it will become an administrative function of the new municipality to work out the continued effect of both ordinances until they are superseded.

We also wish to point out that because a consolidation petition must be found to meet the standards of incorporation (AS 29.06.130(a)) and the LBC may amend the petition and may impose conditions on the consolidation as appropriate, it may be an option for the LBC to impose a condition to have the areawide bed tax question on the ballot as a condition of incorporation and effectively supersede the current tax ordinances (both FNSB and the City of Fairbanks) if it passes. Such an action would presumably eliminate the administrative burden for collection of the two taxes by the new municipality under AS 29.06.160 and having to continue to give effect to the exemption noted in the FNSB ordinance. However, we note that placing the areawide tax question on the ballot and conditioning the consolidation on its passage is unnecessary for the financial viability of the new municipality. The current taxes imposed by FNSB and the city would continue during transition without such a question on the consolidation ballot.

Finally, we stress that it is not legally required that the LBC condition the consolidation to eliminate an administrative burden for the new municipality or that a proposition to deal with an areawide bed tax (separate from the existing bed tax ordinances of the FNSB and the City of Fairbanks) be placed before the voters on the election ballot to effectuate the consolidation.

We hope this addresses your concerns. Please let us know if you need further clarification.

MLV:ja

Exhibit "B"

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Signed by Governor on 5/24/01 into law 22-LS01643
Chapter 31 Session Laws of Alaska 2001

CONFERENCE CS FOR SS FOR HOUSE BILL NO. 13
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE CONFERENCE COMMITTEE

Office: 42661

Sponsor(s): REPRESENTATIVES BURDE, Koberling, Dymov, Hulteen, Pata, Coughlin, Seckel

A BILL

FOR AN ACT ENTITLED

- 1 "An Act relating to municipal service areas and providing for voter approval of the
 2 formation, alteration, or abolishment of certain service areas."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

- 4 " Section 1. AS 29.10.200 is amended by adding a new paragraph to read:

- 5 (60) AS 29.35.450 (voter approval of alteration or abolishment of
 6 service areas).

- 7 " Sec. 2. AS 29.35.450(a) is amended to read:

- 8 (a) A service area to provide special services in a borough or unified
 9 municipality may be established, operated, altered, or abolished by ordinance,
 10 subject to (c) of this section. Special services include services not provided by the
 11 unified municipality or a higher or different level of services. Special services
 12 include services not provided by a borough on an areawide or nonareawide basis in
 13 the borough [,] or a higher or different level of services [SERVICE] than that provided
 14 on an areawide or nonareawide basis. A [THE] borough may include a city in a

HB0013;

For Your Information (noted text amendments)

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service area if

(1) the city agrees by ordinance; or

(2) approval is granted by a majority of voters residing in the city, and by a majority of voters residing inside the boundaries of the proposed service area but outside of the city.

* Sec. 3. AS 29.35.450 is amended by adding new subsections to read:

(c) If voters reside within a service area that provides road, fire protection, or parks and recreation services, abolishment of the service area is subject to approval by the majority of the voters residing in the service area who vote on the question. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be abolished and replaced by a larger service area unless that proposal is approved, separately, by a majority of the voters who vote on the question residing in the existing service area and by a majority of the voters who vote on the question residing in the area proposed to be included within the new service area but outside of the existing service area. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be altered or combined with another service area unless that proposal is approved, separately, by a majority of the voters who vote on the question and who reside in each of the service areas or in the area outside of service areas that is affected by the proposal. This subsection does not apply to a proposed change to a service area that provides fire protection services that would result in increasing the number of parcels of land in the service area or successor service area if the increase is no more than six percent and would add no more than 1,000 residents.

(d) This section applies to a home rule or general law municipality.

* Sec. 4. AS 29.35.470 is amended by adding a new subsection to read:

(b) The assembly may by ordinance establish, alter, and abolish differential tax zones within a service area to provide and levy property taxes for a different level of services than that provided generally in the service area. Taxes levied within a differential tax zone that exceed the amount that would have otherwise been levied may only be used for the services provided in that zone.

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NEW TEXT UNDERLINED (DELETED TEXT BRACKETED)

H000112

Exhibit "C"

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22nd Alaska State Legislature

Information from Representative Con Bunde (R)

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Judiciary Committee Substitute for the Sponsor Substitute for HB 13

Service Areas: Voter Approval/Tax

**An Act relating to municipal service areas and providing
 for voter approval of the formation, alteration, or
 abolishment of certain service areas.**

Updated: February 1, 2001
Contact: Representative Con Bunde at (907) 485-4943

Alaska's Constitution provides for maximum local self-government (Art. X sec. 1) and for the creation, alteration, or abolishment of service areas subject to the provisions of law (Art. X sec. 5).

AS 29.35.450 codifies these Constitutional provisions and establishes the mechanism by which service areas are created, altered, and abolished.

Alaska has approximately 200 service areas; in these areas the local residents use private contractors for necessary services and assess themselves to pay for a desired level of service.

CESS-HB 13 amends, AS 29.35.450 to support local control by clearly identifying whom should vote on the abolishment and alteration of a service area under three scenarios:

- **Abolishment of a service area.**
 Subject to approval by the majority of the voters residing in the service area.
- **Abolishment and replacement of a service area.**

Exhibit "C"

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Must be approved separately by a majority of voters inside an existing service area and by a majority of the voters residing in the proposed service area **BUT OUTSIDE** the existing service area.

- Alteration of service area or combining it with another service area.

Must be approved, separately, by a majority of the voters who vote on the question and who reside in each of the service areas or in a proposed service area affected by the proposal.

This proposed legislation would settle a long time debate about who is entitled to vote during the creation, alteration or abolishment of a service area. This legislation has support throughout service areas in Alaska and I urge the favorable consideration of this committee.

Exhibit "C"

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